25992-B

JUL 28 10 -1 30 P

SURFACE TRANSPORTATION BOARD

OF COUNSEL URBAN A LESTER

ALVORD AND ALVORD
ATTORNEYS AT LAW
1050 SEVENTEENTH STREET, NW
SUITE 301
WASHINGTON, DC

20036

ELIAS C ALVORD (1942) ELLSWORTH C. ALVORD (1964)

(202) 393-2266

FAX (202) 393-2!56

E-MAIL alvordlaw@aol com

July 28, 2010

Chief Section of Administration Office of Proceedings Surface Transportation Board 395 E Street, S.W. Washington, D.C 20423

Re Alabama Power Company

Dear Section Chief,

Enclosed for recordation pursuant to the provisions of 49 U S.C. Section 11301(a) are two (2) copies of an Assignment and Assumption Agreement, dated as of July 28, 2010, a secondary document as defined in the Board's Rules for the Recordation of Documents.

The enclosed document relates to the documents previously filed under Recordation Number 25992.

The names and addresses of the parties to the enclosed document are:

Foreclosing

Lender/Lessor Wells Fargo Bank Northwest, National

Association

299 South Main Street, 12th Floor

Salt Lake Cit, UT 84111

Buyer. First Union Rail Corporation

One O'Hare Center

6250 River Road, Suite 5000

Rosemont, IL 60018

Chief Section of Administration July 28, 2010 Page 2

A description of the railroad equipment covered by the enclosed document is:

Lease #16: 125 railcars: JHMX 5001 - JHMX 5125.

A short summary of the document to appear in the index is.

Assignment and Assumption Agreement.

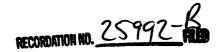
Also enclosed is a check in the amount of \$41.00 payable to the order of the Surface Transportation Board covering the required recordation fee

Kindly return stamped copies of the enclosed document to the undersigned.

Very truly yours,

Robert W. Alvord

RWA/sem Enclosures



JUL 2 8 '10 —1 3 0 PM ASSIGNMENT AND ASSUMPTION AGREEMENT

SURFACE TRANSPORTATION BOARD

This Assignment and Assumption Agreement dated as of July 28, 2010 (this "Agreement"), is between (a) WELLS FARGO BANK NORTHWEST, NATIONAL ASSOCIATION, as security trustee (the "Security Trustee") under that certain Amended and Restated Security Agreement, dated as of December 15, 2006 (as amended, supplemented and modified from time to time, the "Security Agreement"), among the Security Trustee, BBRX One LLC, as borrower (the "Original Borrower"), Hypo Public Finance USA, LLC (as successor to Hypo Public Finance, Inc.), as senior lender (in such capacity as senior lender, the "Original Senior Lender"), Wells Fargo Bank Northwest, National Association, as mezzanine agent (in such capacity, the "Original Mezzanine Agent"), Hypo Public Finance USA, LLC (as successor to Hypo Public Finance, Inc.), as agent for the Original Senior Lender (the "Original Senior Agent") and the mezzanine lenders named therein (collectively, in such capacity as mezzanine lenders, the "Original Mezzanine Lenders"), and which Security Trustee is hereby acting as the foreclosing secured party and, in such capacity as foreclosing lender, is acting for and on behalf of the Original Borrower, as lessor (in such capacity, the "Lessor") and (b) FIRST UNION RAIL CORPORATION, a North Carolina corporation (the "Buyer"). Capitalized terms used herein without definition shall have the meanings ascribed thereto in the Purchase Agreement (defined below), which also contains rules of usage that apply to terms defined therein and herein.

RECITALS:

- A. WHEREAS, the Security Trustee is the security trustee under the Security Agreement, which secures the obligations owed to the Agent and the Lenders under that certain Amended and Restated Senior Loan Agreement, dated as of December 15, 2006 (as amended, supplemented and modified from time to time, the "Loan Agreement"), among Original Borrower, as borrower, the Original Senior Lender, as lenders, and the Original Senior Agent and under the other Loan Documents (as defined in the Loan Agreement).
- B. WHEREAS, the Seller has agreed to sell to the Buyer the Railcar Collateral Assets pursuant to a public foreclosure sale (the "Foreclosure", and Buyer's acquisition of the Railcar Collateral Assets through the Foreclosure, the "Foreclosure Acquisition") conducted in accordance with Sections 9-610 and 9-613 of the Uniform Commercial Code in effect in the State of New York (the "U.C.C.").
- C. WHEREAS, the Buyer is acquiring the Railcar Collateral Assets at the Foreclosure for a cash payment in accordance with the terms of a Purchase Agreement, dated as of July 22, 2010 (the "Purchase Agreement") between the Seller and the Buyer.
- D. WHEREAS, the Purchase Agreement contemplates the execution and delivery of this Agreement by the Security Trustee, acting as foreclosing lender and lessor, and the Buyer.
- E. WHEREAS, through this Agreement and in accordance with the terms hereof, Seller, as the Security Trustee, in its capacity as the foreclosing secured party and Lessor, desires to effect the sale of the Railcar Collateral Assets to the Buyer through the Foreclosure, and the Buyer desires to acquire from the Seller, as the foreclosing lender, all of the rights, title and

interest currently held by the Seller (including, the right, title and interest of the Original Borrower) in and to the Railcar Collateral Assets, and, in conjunction therewith, the Buyer desires to assume all of the Seller's and the Original Borrower's right, title and interest and obligations under the Leases, all upon the terms and subject to the conditions set forth in this Agreement.

NOW, THEREFORE, in consideration of the mutual promises contained herein and other consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows.

1. <u>Assignment</u>. Effective as to each item of Equipment from and after the date hereof, the Lessor hereby assigns, transfers and conveys to the Buyer all of the Lessor's respective rights, title and interest, in and to such item of Equipment listed on Exhibit A hereto and assigns to the Buyer all of the Lessor's rights and obligations, under each of the Leases listed on Exhibit A hereto (collectively, the "Assigned Operative Agreements").

Notwithstanding the foregoing, each of the Lessor and the Buyer shall continue to be entitled to the benefit of any applicable rights to indemnification for tax and other matters which arose or may arise from or be related to any event or circumstance occurring or in existence prior to the date hereof, as specified in the Purchase Agreement.

- 2. Acceptance of Assignment: Effect of Assignment. The Buyer accepts the assignment contained in Section 1 and agrees to be bound to the same extent as the Original Borrower by all the terms of the Assigned Operative Agreements. Effective on and after the date hereof, after giving effect to the transaction described herein, the Buyer shall be deemed to stand in the place of the Original Borrower for all purposes under the applicable Assigned Operative Agreements and each reference in the Assigned Operative Agreements to the Original Borrower shall be deemed to mean the Buyer from and after the date hereof.
- 3. <u>Amendments</u>. No provision of this Agreement may be amended, modified or waived except by written agreement duly executed by each of the parties hereto.
- 4. <u>Notices</u>. All notices, requests or other communications to or upon any party hereto in connection herewith shall be given in the manner prescribed by Section 10.5 of the Purchase Agreement.
- 5. <u>Headings</u>. The section headings used in this Agreement are for convenience of reference only and shall not be used or construed to define, interpret, expand or limit any provision hereof.
- 6. <u>Counterparts</u>. This Agreement may be executed in separate counterparts, each of which when so executed shall be deemed to be an original and all of which taken together shall constitute one and the same agreement.
- 7. Governing Law. This Agreement shall be governed by, and construed and enforced in accordance with, the laws of the State of New York, without giving effect to the conflict of law rules thereof, other than Section 5-1401 of the New York General Obligations Law.

- 8. <u>Recordation</u>. The Buyer and the Lessor agree to record this Agreement with the Surface Transportation Board and with the Registrar General of Canada, if applicable, to evidence the assignment by the Lessor to the Buyer of the Lessor's rights under the Lease, if and only if the Lease has been recorded with the Surface Transportation Board and/or the Registrar General of Canada, as the case may be.
- 9. <u>Further Assurances</u>. Each of the parties hereto covenants and agrees that, at any time and from time to time after the date hereof, at the request and expense of the requesting party hereto, it will promptly and duly execute and deliver, or cause to be executed and delivered, to the requesting party all such further instruments and take all such further action as may be reasonably requested by such party to more effectively sell, transfer, assign, and convey each item of Equipment.
- 10. <u>Binding Agreement</u>. This Agreement shall be binding upon the Lessor and the Buyer, their respective successors and permitted assigns, for the use and purposes set forth and referred to herein, effective as of the date hereof.

[Remainder of page intentionally left blank]

IN WITNESS WHEREOF, this Assignment and Assumption Agreement has been duly executed by the parties hereto as of the date first above written.

	WELLS FARGO BANK NORTHWEST, NATIONAL ASSOCIATION as security bustee, as foreclosing lender acting in such capacity for and on behalf of Original Borrower, as lessor By: Name: Jon Croasmun Title: Vice President FIRST UNION RAIL CORPORATION, as Buyer By: Name: Title:
State of Utah)) Country of Solt Lake	-
County and State, personally appeared Jon Croaduly authorized person of WELLS FALASSOCIATION, as security trustee, as forecle	2010, before me, a Notary Public in and for said asmun, who acknowledged himself/herself to be a RGO BANK NORTHWEST, NATIONAL osing lender acting for and on behalf of Original athorized person, he/she executed the foregoing

IN WITNESS WHEREOF, I have hereunto set my hand and official seal on the date above mentioned.

SARA SLUDER
Notary Public
State of Utah
My Commission Expires May 15, 2012
299 South Main Street, 12th Fir, Sak Late City, UT 84111

gua Shelin

IN WITNESS WHEREOF, this Assignment and Assumption Agreement has been duly executed by the parties hereto as of the date first above written.

WELLS FARGO BANK NORTHWEST, NATIONAL ASSOCIATION

as security trustee, as foreclosing lender acting in such capacity for and on behalf of Original Borrower, as lessor

FIRST UNION RAIL CORPORATION, as Buyer

By: John Blankemeyer
Name: Rob Blankemeyer

Citle: Vice President

On this, the / (1.14 day of July, 2010, before me, a Notary Public in and for said County and State, personally appeared Rob Blankemeyer, a Vice President of First Union Rail Corporation, who acknowledged himself/herself to be a duly authorized officer of First Union Rail Corporation, and that, as such officer, being authorized to do so, he/she executed the foregoing instrument for the purposes therein contained.

IN WITNESS WHEREOF, I have hereunto set my hand and official seal on the date above mentioned.

COMMONWEALTH OF PENNSYLVANIA

Notarial Seal

Roberta S. Eckenrod, Notary Public
Franklin Park Boro, Allegheny County
My Commission Expires May 11, 2014

Member, Pennsylvania Association of Notaries

Notary Public

My Commission Expires: 1 6 11

Residing in: The transfer of t

Exhibit A

(TO ASSIGNMENT AND ASSUMPTION AGREEMENT) EQUIPMENT AND LEASES

BBRX EQUIPMENT & LEASE LIST

Casualty Marks	None								
Reporting Marks	GALX 8011 -	GALX 8126							
Description	4200 CF	Aluminum	body Rotary	Autoflood	III TM , open	top coal	hoppers,	286,000 lbs.	GRL
AAR Code	K341								
Manufacturer	FreightCar	America, Inc.							
Year Built	2005								
Cars	116								
<u>Lessee</u>	Georgia Power	Company							
<u>Lease</u>	1								

Casualty Marks	None
Reporting Marks	BNBX 50001- 50009, inclusive; 50011-50054, inclusive; 50056-50060, inclusive; 50062-50070, inclusive; 50072-50078, inclusive; 50081-50082, inclusive; 50084-50119, inclusive; 50164, 50171, 50179-50184, inclusive; 50187-50190, inclusive; 50187-50190, inclusive; 50201, 50206, 50220, 50237, 50243-50244, inclusive; 50246,
Description	4200 CF Aluminum body Rotary Autoflood III TM , open top coal hoppers, 286,000 lbs. GRL
AAR	K341
Manufacturer	FreightCar America, Inc.
Xear Built	2005
Cars	134
Lessee	BNSF Railway Company
Lease #	2

anufacturer <u>AAR</u> <u>Description</u> <u>Code</u>	Manufacturer AAR Code	Code
inity E530	1980 Trinity E530 Industries	Trinity Industries
		Built 1980

<u>Casualty</u> <u>Marks</u>	None
Reporting <u>Marks</u>	(Reporting Marks attached as Annex A at end of document)
Description	mill gondola railcars equipped with 5' sides, 263,000 lbs. GRL
AAR Code	E530
Manufacturer	Trinity Industries
Year Built	1980
# Cars	123
Lessee	CSX Transportation
Lease	4

1 21 21	
Casualty Marks	None
Reporting Marks	AOK 350569, 350578, 350607, 350624, 350629, 250638, 350641, 350648, 350650, 350664-350666, inclusive; 350678, 350681- 350678, 350681- 350705, 350728, 350705, 350728,
Description	2494 CF 50' mill gondola railcars equipped with 5' sides, 263,000 lbs. GRL
AAR	E530
Manufacturer	Trinity Industries
Year Built	1980
Cars	19
<u>Fessee</u>	Louisiana & North West Railroad
Lease #	v

Casualty Marks	None
Reporting Marks	AOK 350521 AOK 350568 AOK 350508 AOK 350604 AOK 350604 AOK 350634 AOK 350636 AOK 350706 AOK 350706 AOK 350706 AOK 350723 AOK 350723 BOK 350738 BNBX 350523 BNBX 350523 BNBX 350543 BNBX 350544
Description	2494 CF 50' mill gondola railcars equipped with 5' sides, 263,000 lbs. GRL
AAR Code	E530
Manufacturer	Trinity Industries
Year Built	1980
Cars	61
<u>Lessee</u>	Consolidated Grain and Barge Co. (Reporting Mark AOK has or will be remarked to a BNBX mark)
Lease	9

Casualty Marks	None
Reporting Marks	AOK 350501, 350503, 350505, 350510, 350513, 350516-350519, inclusive; 350524, 350530,-350531, inclusive; 350539-350540, inclusive; 350544-350545, inclusive; 350547, 350549, 350547, 350549, 350560, 350564, 350560, 350564, 350566, 350570- 350566, 350570- 350566, 350570- 350573, inclusive; 350573, inclusive; 350573, inclusive; 350573, inclusive; 350576, 350579, 350576, 350579, 350578, inclusive;
Description	mill gondola railcars equipped with 5' sides, 263,000 lbs. GRL
AAR	B530
Manufacturer	Trinity Industries
Year Built	1980
Cars	35
Lessee	Ohio Central Railroad, Inc.
Lease #	

<u>Lessee</u>	# Cars	<u>Year</u> Built	<u>Manufacturer</u>	AAR	Description	Reporting Marks	Casualty Marks
Canadian National Railway Company	230	2005	FreightCar America, Inc.	J311	4520 CF Aluminum body rotary dump BethGon II Coal Porter railcars, 286,000 lbs. GRL	CNA 193000- 193229, inclusive	None -
Northern Indiana Public Service Company	125	2002	FreightCar America, Inc.	J311	4520 CF Aluminum body rotary dump BethGon II Coal Porter railcars, 286,000 lbs. GRL	NORX 9001- 9125, inclusive	None
Coaltrade LLC	135	2005	FreightCar America, Inc.	J311	4520 CF Aluminum body rotary dump BethGon II Coal Porter railcars, 286,000 lbs. GRL	BNBX 853001- 853135, inclusive	None

Lessee	∰ Cars	<u>Year</u> Built	Manufacturer	AAR	Description	Reporting Marks	Casualty Marks
Tennessee Valley Authority #1 (Schedule No. 1)	125	2005	FreightCar America, Inc.	K341	4200 CF Aluminum body Rotary AutoFlood III TM open top coal hoppers, 286,000 lbs. GRL	TVAX 25125, 25127-25142, inclusive; 25144-25151, inclusive; 25153-25202, inclusive; 25204-25227, inclusive; 25229-25249, inclusive; 25258, inclusive	None
Tennessee Valley Authority #2 (Schedule No. 2)	125	2005	FreightCar America, Inc.	K341	4200 CF Aluminum body Rotary AutoFlood III TM open top coal hoppers, 286,000 lbs. GRL	TVAX 25126, 25143, 25152, 25203, 25228, 25250-25252, inclusive; 25254, and 25259- 25374, inclusive	None

Lease	Lessee	# Cars	Year Built	Manufacturer	AAR	Description	Reporting Marks	Casualty Marks
	Tennessee Valley Authority #3 (Schedule No. 3)	125	2005	FreightCar America, Inc.	J311	4520 CF Aluminum body rotary dump BethGon II Coal Porter railcars, 286,000 lbs. GRL	TVAX 25000- 25124, inclusive	None
	Tennessee Valley Authority #4 (Schedule No. 4)	123	2005	FreightCar America, Inc.	K431	4200 CF Aluminum body Rotary AutoFlood III TM open top coal hoppers, 286,000 lbs. GRL	TVAX 25375, 25376, 25378— 25389, inclusive; 25391—25430, inclusive; 25432-25476, inclusive, 25479— 25490, inclusive; 25493—25502, inclusive; and 25505—25506, inclusive	None

<u>Casualty</u> <u>Marks</u>	None	None	None
<u>Reporting</u> <u>Marks</u>	FPPX 6000- 6089, inclusive; and LCRX 6090- 6134, inclusive	JHMX 05001- 05125, inclusive	JHMX 05126- 05148, inclusive; 05150-05171, inclusive; 05173-05189, inclusive; 05192-05195, inclusive; 05197-05209, inclusive; 05211-05250, inclusive;
Description	4520 CF Aluminum body rotary dump BethGon II Coal Porter railcars, 286,000 lbs. GRL	4200 CF Aluminum body Rotary Autoflood III TM open top coal hoppers, 286,000 lbs. GRL	4200 CF Aluminum body Rotary Autoflood III TM open top coal hoppers, 286,000 lbs. GRL
AAR Code	J311	K341	K341
Manufacturer	FreightCar America, Inc.	FreightCar America, Inc.	FreightCar America, Inc.
Year Built	2005	2005	2005
Cars	135	125	119
Lessee	Lower Colorado River Authority	Alabama Power Company #1	Alabama Power Company #2
Lease #	15	16	17

Casualty Marks	None	None
Reporting Marks	AOK 27900 - 27939, inclusive	CIMO 504000- 504004, inclusive; 504015-504018, inclusive; 504020-504031, inclusive; 504034-504069, inclusive; 504071-504074, inclusive; 504078-504079, inclusive; 504083-504239, inclusive;
Description	73' 110-ton riserless deck center partition flatcars with fabricated top chords, 286,000 lbs. GRL	Rapid discharge coal hopper railcars
AAR	F483	K341
Manufacturer	American Railcar Industries	FreightCar America, Inc.
Year Built	2005	2005
Ears	40	220
Lessee	Potlatch Corporation	Union Pacific Railroad Company #2
Lease	18	19

		· · · · · · · · · · · · · · · · · · ·	
<u>Casualty</u> <u>Marks</u>	None	None	None
Reporting Marks	AOK 26965- 26989, inclusive	AOK 26700- 26774, inclusive	AOK 29580- 29645, inclusive; and AOK 29647- 29697, inclusive; 29699-29729, inclusive
Description	73' 110-ton riserless deck center partition flatcars with fabricated top chords, 286,000 lbs. GRL	73' center partition flatcars with flat floors and non-tapered center partitions, 286,000 lbs. GRL	73' center partition flatcars with flat floors and non-tapered center partitions, 286,000 lbs. GRL
AAR	F483	F483	F483
Manufacturer	American Railcar Industries	American Railcar Industries	American Railcar Industries
<u>Year</u> Built	2005	2005	2005
Cars	25	75	148
<u>Lessee</u>	Anthony Forest Products Inc.	Bountiful Grain and Craig Mountain Railroad STORAGE LEASE	Wisconsin and Southern Railroad Company STORAGE LEASE
Lease #	20	21	22

Annex A

Reporting Marks CSX Transportation

350550-350553, inclusive; 350557-350559, inclusive; 350561-350563, inclusive; 350565, 350567, 350574, 350577, 350580-350581, AOK 350502, 350504, 350506-350509, inclusive; 350511-350512, inclusive; 350514-350515, inclusive; 350520, 350522, 350525inclusive, 350614-350616, inclusive; 350618-350623, inclusive; 350626-350628, inclusive; 350630, 350632-350633, inclusive; 350526, inclusive; 350528-350529, inclusive; 350532-350534, inclusive; 350538, 350541-350542, inclusive; 350546, 350548, 350639, 350643-350644, inclusive; 350646-350647, inclusive; 350652, 350654-350655, inclusive; 350657-350658, inclusive; 350662-350663, inclusive; 350667-350669, inclusive; 350672-350673, inclusive; 350675, 350683-350684, inclusive; 350686, 350690-350692, inclusive; 350694-350696, inclusive; 350698-350700, inclusive; 350703-350704, inclusive; 350709-350712, inclusive; 350714, 350716, 350718, 350720-350722, inclusive; 350724, 350726-350727, inclusive; 350729, 350731-350732, inclusive; 350583, 350586-350589, inclusive; 350591, 350594, 350600, 350602, 350605-350606, inclusive; 350609-350610, inclusive; 350734, 350736-350737, inclusive; 350739, 350742, 350745-350746, inclusive.

CERTIFICATION

I, Robert W. Alvord, attorney licensed to practice in the State of New York and the
District of Columbia, do hereby certify under penalty of perjury that I have compared the
attached copy with the original thereof and have found the copy to be complete and
identical in all respects to the original document.

Dated: 7 28 10

Robert W. Alvord